

RURAL COMMUNITY INSURANCE)	AGBCA No. 2000-154-F
COMPANY (1996 Prevented Planting),)	
)	
Appellant)	
)	
Representing the Appellant:)	
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DECISION OF THE BOARD OF CONTRACT APPEALS

September 5, 2003

Before POLLACK, VERGILIO, and WESTBROOK, Administrative Judges.

Opinion for the Board by Administrative Judge WESTBROOK.

This appeal arises out of a Standard Reinsurance Agreement (SRA) between Rural Community Insurance Company (RCIC or Appellant) of Minneapolis, Minnesota, and the Federal Crop Insurance Corporation (FCIC). Under the SRA, RCIC sells and administers multi-peril crop insurance (MPCI) which insurance is reinsured by FCIC. The Risk Management Agency (RMA), an agency of the U.S. Department of Agriculture (USDA), administers and oversees the federal crop insurance programs on behalf of FCIC.

This appeal, in an earlier form, was before the Board and dismissed without prejudice as not having been the subject of a final administrative determination. Rural Community Insurance Co., AGBCA No. 99-146-F, 00-1 BCA & 30,698. Appellant's earlier appeal to the Board resulted from FCIC's motion to dismiss a case Appellant had filed in the Federal District Court for the District of Columbia. There FCIC challenged jurisdiction for failure to exhaust administrative remedies. The court granted the motion subject to reinstatement. The Board dismissed the appeal without prejudice for lack of jurisdiction because there had been neither a final administrative determination nor a request for one. The current appeal was filed with the Board May 25, 2000. Appellant complains that in 1995 FCIC published and adopted a final rule pertaining to prevented planting under the 1996 crop year SRAs, in violation of its own regulations and in excess of statutory authority causing Appellant to suffer damages in the amount of \$7,336,249.

Other reinsured companies also filed appeals related to FCIC's 1995 prevented planting rule. On June 15, 2000, the Board issued its decision in American Growers Insurance Co. (1996 Prevented Planting), AGBCA No. 98-200-F, 00-2 BCA & 30,980, granting the Government's motion for summary judgment in a 2-1 decision, the two judges in the majority basing their decisions to grant summary judgment on entirely different grounds. Subsequently, on December 10, 2001, a divided panel of the Board, consisting of a two-judge majority and a dissent, denied a government motion for summary judgment on the ground that disputed questions of material fact as well as mixed questions of fact and law existed. Rain & Hail Insurance Service, Inc., AGBCA No. 97-182-F, 02-1 BCA & 31,790.

Relying on the American Growers decision and arguing that it required a grant of summary judgment on the basis of *stare decisis*, the Government filed such a motion in the instant case. The Board denied that motion in a split (two-judge majority) decision finding mixed questions of fact and law. The majority also found that the split American Growers decision was not so embedded in the fabric of the law as to constitute *stare decisis*. Rural Community Insurance Co., AGBCA No. 2000-154-F, 02-1 BCA & 31,761.

Thereafter, the parties engaged in discovery and the Board scheduled a hearing for the week of January 13, 2003. During a conference call on November 20, 2002, the parties asked for additional time for discovery and agreed to submit the appeal on the record pursuant to Board Rule 11. A briefing schedule was set. Subsequently, the parties jointly moved for an extension of the deadline for supplementation of the record pending settlement discussions. The parties have now informed the Board that the case has settled. Appellant's counsel has provided the Board with a copy of a fully executed settlement agreement.

DECISION

The parties having settled the appeal, it is hereby dismissed with prejudice.

ANNE W. WESTBROOK
Administrative Judge

Concurring:

HOWARD A. POLLACK
Administrative Judge

JOSEPH A. VERGILIO
Administrative Judge

Issued at Washington, D.C.
September 5, 2003